IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 925 of 1986

with

CRIMINAL APPEAL No 956 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MURLIDHAR G THADANI

Appearance:

1. Criminal Appeal No. 925 of 1986
   MS HANSABEN PUNANI, APP for Petitioner
   MR VIJAY H PATEL for Respondent No. 1, 3, 4
   MR MG NAGARKAR for Respondent No. 2

2. Criminal AppealNo 956 of 1986
   MS HANSABEN PUNANI, APP for Petitioner
   MR VIJAY H PATEL for Respondent No. 1

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 24/03/2000

ORAL JUDGEMENT

1. It would appear that in respect of samples of tea taken at around 6.30 p.m./ 7.00 p.m. on 17/11/1983 by two different Food Inspectors being the complainants in Criminal Case Nos. 321 and 322 of 1984, separate complaints came to be filed. In Criminal Case No. 321 of 1984 there were three accused persons, namely, Murlidhar Gulabrai Tharani, M/s. Kishor Brothers and M/s. Jay Traders; whereas in Criminal Case No. 322 of 1984 there were four accused persons, namely, Murlidhar Gulabrai Tharani, Jayantilal Chhotalal Shah, M/s. Anurag General Stores and M/s. Kishor Brothers. It would further appear that both the Food Inspectors had accompanied each other to the shop where accused no. 1 Murlidhar Gulabrai Tharani was working and carrying on the work of collecting loose tea from the bags (30 nos.) lying in the shop. In so far as the second case is concerned, it would appear that accused no. 1 was found to be present and found to carry on business in the shop. There were 20 boxes and 10 packets containing tea. In the first case the bag contained description of "Shiv Shankar CTC Assam" and in the other case the bag contained the description "Shankar Chhap, Assam". Both the Food Inspectors being the complainants in the respective cases, had an occasion to obtain samples from the respective bags after following the procedure as detailed in the respective orders of acquittal rendered by the Ld. Magistrate. In so far as the Criminal Case No. 321 of 1984 is concerned the Ld. Magistrate has held that the sanction accorded by the Local Health Authority was not in accordance with law and was mechanical. This he did upon appreciation of the evidence and upon verification of the facts in that regard from the relevant document. He held that the sanctioning authority has not at all looked at the relevant material more particularly the material with regard to who was dealing with the tea in question and who was the owner/partner of the concerned firm. The Food Inspector did not give any complaint or report with regard to M/s. Anurag General Stores alleged to be owned by Jayantilal Chhotalal Shah and the firm of M/s. Murlidhar Gulabrai; whereas the sanctioning authority has given sanction for prosecuting these two persons. Same is case with regard to firm of M/s. Kishor Brothers and Jay Traders. Thus, upon appreciation of evidence and the facts concerning the proposed prosecution, Ld.

Magistrate came to the conclusion that there was total non-application of mind on the part of the sanctioning authority. That is how the accused person/s was/were required to be acquitted as per the impugned judgment and order dated 30/4/1986.

2. In so far as the Criminal Case No. 322 of 1984 is concerned, the Ld. Magistrate came to the conclusion that the prosecution failed to establish that accused nos. 2 and 3 were carrying on business in tea and that accused no. 4 was a partnership firm. He also held that the sanction given by the Local Authority was also not legal and valid and as aforesaid was suffering from the vice of total non-application of mind to the facts and material.

3. Now upon hearing the Ld. APP for the State as well as Ld. Advocate appearing for the accused persons in the respective appeal, it would first appear that there is a vital difference between the report of two Public Analysts, one from the State laboratory at Vadodara and second from the Central Food Laboratory at Pune. It is no-doubt true that the sample tea was reported to be adulterated in both the reports and the Ld. Magistrate has held that the tea was not according to the standards laid down under the PFA Act. Even then the comparison of the two reports would make an interesting reading. For example total ash in the State report is found to be 4.7% against the permissible limit of 5% to 8%; whereas in the Central report it is 5.98%. In so far as the ash soluble in boiling distilled water is concerned, there is a difference of nearly 4%, but in either case it does not offend the standard. Ash insoluble in DIL.HCL is found to be .2490% against the maximum 1% in State report; whereas it is found to be 0.18% in the Central report. That is also not offending the standard. Then the extract as per column no. 4 (water extract) is found to be 29.79% against minimum required 32% in State report; whereas it is 27.7% in the Central report. In so far as alkalinity is concerned, it is 1.405% in State report; whereas it is 1.41% in Central report and in either case it is not offending the standard. Crude fibre is found to be 20.57% against maximum 17.0% in State report; whereas it is 14.5% in Central report. This shows a vital difference. In State report there is absence of iron patcicles; whereas in the Central report it is 35.7% iron filings ppm. In both the reports, however, finding is that there is mixture of Chana (Cicer Arietinum husk). Keeping in mind the aforesaid state of report of Public Analyst and absence of finding about the sample tea being injurious to human health, the evidence adduced before the Ld. Magistrate

has been once again scrutinised for the purpose of finding out whether in fact the Local Health Authority has granted sanction after applying mind to the relevant fact and material. On the face of the material presented before the Local Authority, it would clearly appear that there is clear non-application of mind on the part of sanctioning authority. The finding of the Ld. Magistrate in this respect, therefore, can hardly be faulted.

4. In so far as Criminal Case No. 322 of 1984 is concerned, there is a similar pattern of difference between the report of State Public Analyst and Director of Central Food Laboratory, although the ultimate finding appeared to be matching. However, on scrutiny of the evidence as in the other case, in this case also, the finding of the Ld. Magistrate about non-application of mind on the part of the sanctioning authority cannot be faulted.

5. Hence, bearing in mind the facts of the present case qua both the complaints, these appeals deserve to be dismissed. Order accordingly.

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PVR.